

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

JORGE E. RODRIGUEZ
Plaintiff,

V.

CIVIL NO. 03-1097 (SEC)

**STATE INSURANCE FUND
CORPORATION; et al.
Defendants.**

Defendants.

REPORT AND RECOMMENDATION

This is an action for declaratory and injunctive relief and for compensatory and punitive damages brought by the plaintiff, Dr. Jorge E. Rodriguez (“Rodriguez”) against his former employer, State Insurance Fund Corporation (“SIF”), Nicolas Lopez Peña (“Lopez”) both in his personal and official capacity as Administrator of the State Insurance Fund Corporation, and Dr. Maria Isabel Lastra (“Lastra”) both in her personal and official capacity as Director of the Medical Area of the State Insurance Corporation, pursuant to 42 U.S.C., § 1983 and the First, Fifth and/or Fourteenth Amendments to the United States Constitution, Article II, §§ 1, 4, 6-8 of the Puerto Rico Constitution; the laws of the Commonwealth of Puerto Rico, Law 100, 29 L.P.R.A. § 146 et seq., Law 80, 29 L.P.R.A. § 185a et seq., Article 1077 of the Puerto Rico Civil Code, 31 L.P.R.A. 3052, Articles 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. 5141, 5142 and the local statute prohibiting libel and slander, 32 L.P.R.A. § 3141 et seq.. Rodriguez alleges that the SIF did not renew his service contract due to political reasons.

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, defendants now move for summary judgment of plaintiff's Section 1983 claim, as well as his supplemental state law claims. (See Docket Nos. 32, 33 and 34). The issues presented are whether Rodriguez has established a genuine issue of material fact with respect to the defendants' reasons not to renew his service contract and dismiss him immediately, to his allegations of violation of due process, hostile environment and defendants' qualified immunity.

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3 **I. Factual Background**

4 On October 14, 1991, Rodriguez signed a one year contract to provide orthopaedic services
5 to the SIF's patients at the Industrial Hospital. Similar contracts were executed by the parties until
6 1999, when the term for the contract was increased for two years. The last contract executed by the
7 parties covered the period of 1999-2001. For ten and a half years Rodriguez rendered his services
8 as physician and surgeon to the injured laborers covered by the SIF's policy in the Industrial
9 Hospital, and out-patient clinics in the San Juan area. See Uncontested Facts, ¶ 4, 12 and 14 (Docket
10 28).

11 On November 7, 2000, general elections were held in Puerto Rico. The incumbent New
12 Progressive Party ("NPP") was defeated by the Popular Democratic Party ("PDP"). As part of newly
13 elected Governor Sila Maria Calderon's administration plan, she named co-defendant Lopez as
14 administrator of the SIF. Lopez assumed office on February 2001. Subsequently, he appointed Lastra
15 as his special assistant and then named her SIF Medical Director. Thereafter, on January 31, 2002
16 co-defendant Lastra sent Rodriguez a letter terminating his employment effective that same day. See
17 Uncontested Facts, ¶ 5, 6, 7, 8 and 9 (Docket 28).

18 **II. Summary Judgment Standard**

19 Summary Judgment is appropriate when "the pleadings, depositions, answers to
20 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
21 genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter
22 of law." Fed. R. Civ. P. 56(c); Celotex Corp. V. Catrett, 477 U.S. 317, 322 (1986). The nonmoving
23 party must then "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ.
24 56(e). When deciding a motion for summary judgment, the Court must view the record in the light
25 most favorable to the party opposing summary judgment, including all reasonable inferences in the
26 nonmoving party's favor. See id. "If, after canvassing the material presented, the district court finds
27 some genuine factual issue remains in the case, whose resolution one way or the other could affect
28 its outcome, the court must deny the motion." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248

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3 (1986) (emphasis added). “The movant’s burden is particularly rigorous when the disputed issue
 4 involves questions of motive or intent, since in these cases jury judgments about credibility are
 5 typically thought to be of special importance.” Lipsett v. Univ. of P.R., 864 F. 2d 881, 895 (1st Cir.
 6 1988). In a discriminatory employment action case, a plaintiff, “will rarely, if ever, be able to
 7 produce a ‘smoking gun’ that provides direct, subjective evidence of an employer’s animus.”
 8 Stepanischen v. Merchs. Despatch Transp. Corp., 722 F. 2d 922, 928 (1st Cir. 1983). “Rather, a
 9 plaintiff must try to convince the fact-finder to draw an inference from a broad array of
 10 circumstantial and often conflicting evidence....” Id. Even in these cases, however, the Court will
 11 not refuse to grant summary judgment in favor of the defendant if the plaintiff’s claim rests merely
 12 upon “conclusory allegations, improbable inferences, and unsupported speculation.” Suarez v.
 13 Pueblo Intl. Inc., 229 F. 3d 49, 53 (1st Cir. 2000) (citing Medina-Munoz v. R.J. Reynolds Tobacco
 14 Co., 896 F.2d 5, 8 (1st Cir. 1990)).

15 **III. Legal Analysis**16 A. First Amendment Claims

17 In Mt. Healthy School District v. Doyle, 429 U.S. 274, 287 (1977), the Supreme Court
 18 established a two-part burden-shifting analysis for evaluating political discrimination claims of
 19 public employees. In order to assert a colorable claim of political discrimination, the plaintiff bears
 20 the initial burden of showing that his or her political affiliation was a ‘substantial or motivating’
 21 factor behind the challenged employment decision. Id. If the plaintiff does so, the burden shifts to
 22 the defendant to show, by a preponderance of evidence, that the same employment decision would
 23 have been made even in the absence of the plaintiff’s protected conduct. Id. Once the defendant
 24 proffers a nondiscriminatory reason for the adverse employment action, the plaintiff then has a
 25 chance to reject said reason by “adducing evidence that discrimination was more likely than not a
 26 motivating factor.” Padilla-Garcia v. Rodriguez, 212 F. 3d 69, 78 (1st Cir. 2000). Unlike the burden
 27 shifting paradigm under Title VII, the defendant in a political discrimination case bears the burden
 28 of persuading the factfinder that his/her reason for the adverse employment action is credible.

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43 Padilla-Garcia, 212 F.3d at 78. "Accordingly, once the burden of persuasion shifts to the defendant-
4 employer, the plaintiff-employee will prevail unless the factfinder concludes that the defendant has
5 produced enough evidence to establish that the plaintiff's dismissal would have occurred in any event
6 for nondiscriminatory reasons." Acevedo-Diaz, 1 F.3d at 67.7 1. Prima Facie Case8 According to Rodriguez, on April 17, 2001, the Director of the Office of Contracting, Alberto
9 Rivera, requested from him a series of documents required to sign a new contract for the coming
10 two-year period (2001-2003). **Plaintiff's Exhibit IX**, p.10, ¶ 23 (Docket 51). Rodriguez
11 subsequently filed with the SIF all the documentation requested for such contract. **Plaintiff's**
12 **Exhibit I**, p. 96 (Docket 51). Thereafter, the Office of Contracting provided Rodriguez with a
13 contract, which he proceeded to sign and submit. **Plaintiff's Exhibit I**, p. 36 (Docket 51). As time
14 went by and the SIF did not sign the contract, Rodriguez alleges he went on several occasions to the
15 Office of Contracting to inquire about the same. **Plaintiff's Exhibit VIII**, p. 31-32 and 34-35
16 (Docket 51). At one point, Rodriguez claims that Associate Director Edna Saez told him that Lastra
17 had taken the contract into her office. **Plaintiff's Exhibit I**, p. 170 and **Plaintiff's Exhibit XI**, p.
18 43-45 (Docket 51). Thereafter, Rodriguez alleges he attempted to meet with Lastra, but she would
19 not receive him. **Plaintiff's Exhibit I**, p. 173-174 (Docket 51). Rodriguez further alleges that Lastra
20 knew of his affiliation to the NPP. **Plaintiff's Exhibit I**, p. 56 (Docket 51). Rodriguez also states
21 that the fact the Office of Contracting requested and accepted his signature on the contract meant that
22 he had submitted all the documentation necessary for the renewal of said contract. **Plaintiff's**
23 **Exhibit VIII**, p. 67 (Docket 51). In addition, Rodriguez claims that almost immediately upon
24 assuming office, Lastra engaged in a pattern of persecution and harassment against him and other
25 NPP affiliates, creating a hostile work environment. **Plaintiff's Exhibit I**, p. 44-45 (Docket 51).
26 Lastly, Rodriguez alleges that Lastra commented in the presence of other SIF employees, including
27 the Director of the Contracting Office, that she was not going to renew Rodriguez's contract.
28 **Plaintiff's Exhibit VIII**, p. 45-47 (Docket 51).

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3 As noted above, Rodriguez has clearly suffered an adverse employment action in as much
4 as he was discharged after signing a contract for the 2001-03 period, submitting the required
5 documentation. The Court also notes that Rodriguez has presented evidence that Lastra knew of his
6 political affiliation, and that the alleged conduct occurred shortly after her appointment. In light of
7 the aforementioned, the Court concludes that Rodriguez has met his *prima facie* burden at this, the
8 summary judgment stage.

9 **2. SIF's Mt. Healthy Defense**

10 Defendants allege that they had no knowledge of plaintiff's affiliation to the NPP party.
11 **Defendant's Exhibit XVIII**, p.15 (Docket 33). Moreover, defendants contend that efforts were
12 made to renew Rodriguez's contract, but that he did not fully comply with the requirements imposed
13 by laws and regulations of the Corporation and the Office of the Comptroller of Puerto Rico for the
14 execution of contracts. **Defendant's Exhibits VII, VIII, IX, X, XI, and XVIII** (Docket 33).
15 Defendants state that plaintiff owed a sum of child support to ASUME, and that the regulations of
16 the Office of the Comptroller of Puerto Rico require for the execution of contracts that the
17 independent contractor should not have any such debt. **Defendant's Exhibits XII and XIII** (Docket
18 33). Defendants also allege that Rodriguez had too many malpractice lawsuits in medical procedures
19 conducted for the SIF and in which the SIF had been included as defendant, and that the SIF
20 determined not to renew contracts with doctors who had many suits for medical malpractice in which
21 the SIF was included. **Defendant's Exhibits V and XVII** (Docket 33).

22 According to Rodriguez, on January 25, 2002, defendant Lastra sent a letter to the Associate
23 Director of the Contracting Office, Edna Saez, recommending the non-renewal of the Rodriguez
24 contract because he allegedly owed \$ 60,000 in child support to ASUME. **Plaintiff's Exhibit XV**
25 (Docket 51). Notwithstanding, Rodriguez has presented evidence that on January 31, 2002, Saez
26 wrote back to Lastra and told her that the ASUME debt was not, in and of itself, cause for not
27 renewing Rodriguez's contract, because the ASUME law provided for the withholding of the amount
28 due from his fees. **Plaintiff's Exhibit XVI** (Docket 51). Regarding to the defendants' proffered

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3 reason not to renew his contract because of the complaints filed against him, Rodriguez states that
4 the defendant Lastra admitted that such a determination did not correspond to her, but to the Director
5 of the SIF's Legal Office, on the basis of judgments where malpractice liability had actually been
6 imposed on the SIF, not on the basis of mere complaints, as suggested by Lastra. **Plaintiff's Exhibit**
7 **II(a)**, p. 69 and 75-78 (Docket 51). Further, Rodriguez notes that defendant Lastra acknowledged
8 in her deposition that the contracts and employment of other physicians who had also been sued were
9 not terminated. **Plaintiff's Exhibit II(c)**, p. 35-36 (Docket 51). Rodriguez also notes that, on
10 February 11, 2002, the SIF's Sub-administrator, Sara Tolossa, sent a note to defendant Lastra stating
11 concerns for Lastra's termination letter to Rodriguez, and instructing Lastra to take uniform
12 measures and follow procedures for the non-renewal of professional services in the future. **Plaintiff's**
13 **Exhibit XXII** (Docket 51).

14 As a result of the proceeding, the Court concludes that Rodriguez has set forth sufficient
15 evidence to rebut the defendant's proffered reasons at this stage of the proceeding. Consequently,
16 the Court **RECOMMENDS** that defendant's summary judgment motion be **DENIED** as to
17 Rodriguez's First Amendment claim.

18 B. Hostile Work Environment

19 In viewing a hostile work environment claim, the Court must consider factors such as the
20 frequency of the alleged discriminatory conduct, its severity, whether it is physically threatening or
21 humiliating, or a mere offensive utterance; and whether it interferes with an employee's work
22 performance. Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993). Evidence of remarks,
23 innuendos, ridicule and intimidation may be sufficient to support a hostile work environment claim.
24 O'Rourke v. City of Providence, 235 F. 3d 713, 729 (1st Cir. 2001). Moreover, the accumulated
25 effect of incidents of humiliating, offensive comments, taken together, can also constitute a hostile
26 work environment. Id.

27 Defendants allege that Rodriguez was not subjected to unwelcome harassment and that he
28 cannot prove that the alleged harassment was based on his political affiliation and that the alleged

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3 harassment affected a term, condition, or privilege of employment. (Docket 34, p. 11). In response,
4 Rodriguez has failed to offer evidence to support his claim of hostile work environment. (Docket
5 50). Thus, the Court **RECOMMENDS** defendants' summary judgment motion on this ground be
6 **GRANTED.**

7 C. Due Process Claims

8 The Due Process Clause of the Fourteenth Amendment guarantees a pre-termination hearing
9 to public employees who have a constitutionally cognizable property interest in their employment.
10 Bd. Of Regents of State Colls. V. Roth, 408 U.S. 564, 566 (1972). In order to establish a
11 constitutionally-protected property interest, a plaintiff must demonstrate that he has a legally
12 recognized exception that he will retain his position. Santana v. Calderón, 342 F.3d 18, 24 (1st Cir.
13 2003). A legitimate expectation of continued employment may derive from a statute or an officially
14 sanctioned rule of the workplace. Id.

15 Defendants now move for summary judgment as to Rodriguez's due process claim alleging
16 that he does not have a protected interest or a property right because he was an independent
17 contractor, not an employee of the SIF. Defendants allege that Rodriguez did not receive a salary
18 and that he instead billed the SIF for his services. Defendants also allege that Rodriguez, as the
19 terms of his contract clearly stated, had a private office at the same time he worked for the SIF. They
20 further contend that Rodriguez did not have any of the benefits of a regular employee of the SIF such
21 as vacation and sick leave. Thus, they allege, Rodriguez did not have a valid expectation to continue
22 his job. (Docket 34, p.16).

23 Rodriguez counters by alleging that after working for seven months under the same
24 conditions as he had worked for during the prior ten and a half years, and producing all the
25 documentation pertaining to the renewal of his contract that had been requested to him, he
26 reasonably considered that his professional services contract for the period from 2001-2003 had been
27 renewed. (Docket 50, p. 20). Rodriguez also alleges that defendant Lopez admitted that the
28 termination of his contract was done in violation of the Procedure for the Contracting of Service with

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3 Health Professionals because the Contracting Office never recommended the rescission of such
 4 contract nor prepared a letter of rescission for Lopez's signature, and Lopez never sent a letter of
 5 rescission with his signature to Rodriguez, setting forth the reasons for such action. **Plaintiff's**
 6 **Exhibit IV(b)**, p. 15 and 25-26 (Docket 51). Indeed, on February 11, 2002, the SIF's Sub-
 7 administrator, Sara Tolossa, sent a note to defendant Lastra stating concerns for Lastra's termination
 8 letter to Rodriguez and instructing Lastra to take uniform measures and follow procedures for the
 9 non-renewal of professional services in the future. **Plaintiff's Exhibit XXII** (Docket 51).

10 It has been well settled that, except for policy making/confidential positions, all government
 11 employees are protected from discharge from their positions on the basis of their political affiliation.
 12 Protections generally afforded to public employees against being discharged for refusing to support
 13 political party or its candidates, or for otherwise exercising First Amendment rights, also extend to
 14 independent contractors. O'Hare Truck Service, Inc. v. City of Northlake, 518 U.S. 712, 721(1996).

15 Having found that Rodriguez has established a *prima facie* case of political discrimination
 16 for summary judgment purposes, the Court **RECOMMENDS** that defendants' summary judgment
 17 motion as to plaintiff's Due Process Clause be **DENIED**.

18 D. Qualified Immunity

19 The doctrine of qualified immunity protects government officials who perform discretionary
 20 functions from liability for monetary damages under 42 U.S.C. § 1983. Generally, qualified
 21 immunity shields government officials "from suit and liability when their conduct does not violate
 22 clearly established statutory authority or constitutional rights, which a reasonable person should have
 23 known at the time of the conduct at issue." Mitchell v. Forsyth, 47 U.S. 511, 524 (1985); Harlow
 24 v. Fitzgerald, 457 U.S. 800, 818 (1982); see Acevedo-Garcia v. Vera-Monroig, 20 F.3d 1, 10 (1st Cir.
 25 2000) (explaining right must be well established and official understood his actions would violate
 26 that right).

27 When confronted with a claim of qualified immunity, the Court must first consider whether
 28 the allegations of the complaint make out a valid constitutional claim. Wilson v. Layne, 526 U.S.

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3 606, 605 (1999). If the Court finds that the complaint raises such a claim, the Court must then
 4 determine as a matter of law, whether at the time of the alleged violation, the constitutional right was
 5 clearly established. St. Hilaire v. Laconia, 71 F.3d 20 (1st Cir. 1995). Making said determination
 6 “must be undertaken in light of the specific context of the case, not as a broad proposition.” Saucier
 7 v. Katz, 533 U.S. 194, 199 (2001).

8 In this case, Rodriguez has alleged facts that if true, amount to First and Fourteenth
 9 Amendment claims. Because issues of fact exist regarding possible discriminatory animus, the Court
 10 is precluded from considering the qualified immunity defense at this time. See Padilla Garcia v.
 11 Rodriguez, 212 F. 3d 69, 74 (1st Cir. 2000). Consequently, the Court **RECOMMENDS** that
 12 defendants’ summary judgment motion on this ground be **DENIED**.

13 **IV. Conclusion**

14 **WHEREFORE**, the Court hereby **RECOMMENDS** that SIF’s motion for summary
 15 judgment (Docket No.32) be **GRANTED** in part and **DENIED** in part. The Court
 16 **RECOMMENDS** that plaintiff’s hostile work environment cause of action be **DISMISSED**.

17 Under the provisions of 28 U.S.C. sec. 636 and Rule 72(d), Local Rules, District of Puerto
 18 Rico, any party who objects to this report and recommendation must file a written objection thereto
 19 with the Clerk of the Court within ten (10) days of the party’s receipt of this report and
 20 recommendation. The written objections must specifically identify the portion of the
 21 recommendation, or report to which objections is made and the basis for such objections. Failure
 22 to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155
 23 (1985), reh’g denied, 474 U.S. 1111 (1986); Davet v. Maccorone, 973 F. 2d 22, 30-31 (1st Cir.
 24 1992).

25 **SO RECOMMENDED.**

26 In San Juan, Puerto Rico this 22nd day of July, 2005.

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3 **S/ Gustavo A. Gelpí**
4 **GUSTAVO A. GELPI**
5 U.S. Magistrate Judge

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